

1 TIM WARD
2 TULARE COUNTY DISTRICT ATTORNEY
3 NADYA HANNAH, DEPUTY DISTRICT ATTORNEY
4 SBA#284897
5 221 S. MOONEY BLVD., ROOM 224
6 VISALIA, CA 93291
7 TELEPHONE: (559) 636-5494
8 FAX: (559) 730-2658

9
10 Attorneys For Real Party In Interest

11
12 TULARE COUNTY SUPERIOR COURTS
13
14 STATE OF CALIFORNIA, VISALIA DIVISION

15 In Re SEARCH WARRANT #013487

16 YORAI BENZEEVI,

17 Moving Party,

18 v.

19 SUPERIOR COURT OF THE COUNTY OF
20 TULARE,

21 Respondent,

22 TULARE COUNTY DISTRICT ATTORNEY,

23 Real Part in Interest.

24 CASE NO: _____

25 REAL PARTY IN INTEREST'S
26 OPPOSITION TO SURREPLY IN
27 SUPPORT OF SEAL & FOR A
28 PROTECTIVE ORDER REGARDING
29 PORTIONS OF DR. BENZEEVI'S
30 MEMORANDUM AND OPPOSITION
31 TO MOTION TO SEAL AND FOR A
32 PROTECTIVE ORDER OF PORTIONS
33 OF DR. YORAI BENZEEVI'S
34 SURREPLY IN SUPPORT OF HIS
35 MOTION FOR RETURN OF SEIZED
36 PROPERTY AND RELATED
37 EVIDENTIARY HEARING AND
38 SUPPORTING DECLARATION OF
39 DUROSS O'BRIAN; DECLARATION
40 OF BEVAN A DOWD IN SUPPORT
41 THEREOF.

42 Date: November 9th, 2018

43 Time: 2:00 pm

44 Dept: 13

45
46 Respondent, the People of the State of California, by and through their
47 attorneys, TIM WARD, District Attorney, and NADYA HANNAH, Deputy District Attorney,
48 submit this REAL PARTY IN INTEREST'S OPPOSITION TO SURREPLY IN SUPPORT OF
49 SEAL & FOR A PROTECTIVE ORDER REGARDING PORTIONS OF DR. BENZEEVI'S
50 MEMORANDUM AND OPPOSITION TO MOTION TO SEAL AND FOR A PROTECTIVE
51 ORDER OF PORTIONS OF DR. YORAI BENZEEVI'S SURREPLY IN SUPPORT OF HIS
52 OPPOSITION TO SURREPLY AND MOTION TO SEAL

MOTION FOR RETURN OF SEIZED PROPERTY AND RELATED EVIDENTIARY
HEARING AND SUPPORTING DECLARATION OF DUROSS O'BRIAN; DECLARATION
OF BEVAN A DOWD IN SUPPORT THEREOF. This motion is based upon the pleadings,
points and authorities, evidence, and argument presented at the hearing of the matter.

ARGUMENT AND AUTHORITY

I. Respondent's Opposition to Movant's Surreply in Support of Motion to Seal and for a Protective Order

The Movant raised three arguments in its surreply. These additional arguments still do not make Movant meet its burden of presenting information sufficient to seal the record.

First, the Movant alleged the fact that Dr. Benzeevi embezzled funds from the Tulare Local Healthcare District is an incorrect notion (Movant's Surreply in Support of Sealing at 2). The Movant delved into the Management Services Agreement and resolution 852 to select the authority given to HealthCare Conglomerate Associates, LLC ("HCCA") and Dr. Benzeevi (Movant's Surreply in Support of Sealing at 2 & 3). The Movant selectively chose to present what was seemingly authorized to Dr. Benzeevi and completely ignored what was not authorized: self-interested transactions in violation of the Tulare Regional Medical Center's conflict of interest policies, in violation of Dr. Benzeevi's Fiduciary duty, and in violation of California's conflict of interest laws. The known facts of this case indicate that whether consent claimed was properly obtained is still at dispute. The Movant conveniently based its allegation solely on an unwarranted assumption. Therefore, such allegations lend no help to the Movant's burden of proof and should be disregarded by the Court.

Second, the Movant alleged that the redactions Dr. Benzeevi proposes are narrowly tailored and seek to redact only that information related to Dr. Benzeevi's unrelated personal financial information. Specifically, the Movant seeks to seal the deposits and balances of Dr. Benzeevi's bank account since the Respondent agrees to redact the account number. The

OPPOSITION TO SURREPLY AND MOTION TO SEAL

Movant alleged that analysis of Dr. Benzeevi's personal financial information is not appropriate for public consumption (Movant Surreply in Support of Sealing at 3). However, contrary to the Movant's allegation, here such personal financial information is related to public fund misappropriation and the allegedly narrowly tailoring does not address this issue. After all, what information about a bank account can be more relevant than the account activities. The Court may seal irrelevant financial information in whatever form it takes, either removing it from record or sealing it for good cause. *NBC Subsidiary (KNBC-TV), Inc. v Superior Court, supra, 20 C4th at 1222. Overstock.Com, Inc. v Goldman Sachs Group, Inc.* (2014) 231 CA4th 471, 503–506, 180 CR3d 234. However, the individual's financial information here is by no means irrelevant or unrelated.

Finally, the Movant alleged that the Respondent used information obtained through a search warrant to embarrass and humiliate Dr. Benzeevi. The Movant cited two precedents. One case involves holding a party in contempt for disclosing information covered by a sealing order and the other case involves the secrecy of grand jury proceeding. Movant Surreply in Support of Sealing at 3 & 4. However, the current case is easily distinguishable from those two precedents. The sole basis of the Movant's allegation is that the Respondent made his opposition to Dr. Bezeevi's Motion available publicly. By alleging so, the Movant ignored the essential notion that court records are open until the presumption of openness is overcome and the presumption of openness may be overcome only after the Court holds a hearing and expressly makes such finding. Cal. Rules of Court, Rule 2.551(c). Ironically, the Movant's admission that such record was already made available to public only calls for the denial of the sealing order. In *H.B. Fuller Co. v Doe, supra, 151 CA4th at 898*, the court found no justification for sealing records that contain only facts already known or available to public.

In conclusion, the Movant again fails to properly balance the factors required to seal under Cal. Rules of Court 2.550(d). Dr. Benzeevi's alleged overriding interest – his narrow self interest in his financial privacy and in HCCA's internal corporate finances – simply cannot defeat the public interest in a case where the public interest directly calls for the

OPPOSITION TO SURREPLY AND MOTION TO SEAL

1
2 openness. The People respectfully request that the Court deny the movant's motion to seal and
3 the related protective order.

4

5 **II. Respondent's Opposition to Movant's Motion to Seal and for a Protective Order**
6 **of Portions in its Surreply in Support of Motion for Return Seized Property**

7 As for Respondent's opposition to Movant's Motion to Seal and for a Protective Order
8 Portions of Dr. Yorai Benzeevi's Surreply in Support of His Motion for Return of Seized
9 Property and Related Evidentiary Hearing and Supporting Declaration of Bevan A. Dowd,
10 Respondent relies upon and incorporates the argument and authority stated above and in
11 Respondent's Supplement to Opposition to Seal & for a Protective Order regarding Portions
12 of Dr. Benzeevi's Memorandum in Support of His Motion for Return of Seized Property and
13 Related Evidentiary Hearing and Supporting Declaration of Duross O'brian; Declaration of
14 Bevan A. Dowd in Support Thereof.

15
16 Dated: November 2, 2018

17 Respectfully submitted,

18 TIM WARD
19 DISTRICT ATTORNEY

20 
21 NADYA HANNAH
22 DEPUTY DISTRICT ATTORNEY

23
24
25
26
27
28 OPPOSITION TO SURREPLY AND MOTION TO SEAL